

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 6 (Sub-No. 490X)

BNSF RAILWAY COMPANY—ABANDONMENT EXEMPTION—  
IN KING COUNTY, WASH.

Decided: December 3, 2015

BNSF Railway Company (BNSF) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon 1,100 linear feet of rail line between milepost 4.53 and the end of the line at Engineering Station 258+07 in Seattle, King County, Wash. (the Line). Notice of the exemption was served and published in the Federal Register on August 19, 2015 (80 Fed. Reg. 50,381). The exemption became effective on September 18, 2015.

BACKGROUND

On September 8, 2015, the City of Seattle (City) filed a combined motion to reopen and motion for an environmental stay of the effectiveness of the abandonment authorization. The City argues that the location of milepost 4.53, the beginning point of the abandonment, is unclear based on the maps filed by BNSF. According to the City, BNSF has orally informed the City where milepost 4.53 is located, but has also made contradictory statements regarding which tracks east of milepost 4.53 are being abandoned. Additionally, the City argues that, based on statements by BNSF, a portion of the Line may be subject to an industry track agreement with a customer.<sup>1</sup> The City claims that if the industry track agreement encompasses a portion of the Line proposed for abandonment and the track remains in use, it may not be abandoned using the notice of exemption process; under those circumstances, the City argues, the abandonment should be declared void ab initio. The City states that BNSF should clarify the location of milepost 4.53 and that it will withdraw its motion if BNSF provides adequate clarification. BNSF has not filed a response to the City's motions.

By decision served on September 17, 2015, the Board issued a notice of interim trail use (NITU) permitting interim trail use negotiations and imposed a public condition. The Board also imposed one environmental condition recommended by the Board's Office of Environmental Analysis and denied the request for an environmental stay. The decision noted that the City's

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<sup>1</sup> The City attached an email that appears to be from a real estate representative of BNSF, which states that BNSF owns a sidetrack, that there is an industry track agreement with a customer, and that any future trail would need to leave adequate clearance to serve the customer. (Mot., Ex. B.)

motion to reopen would be addressed in a separate decision.

### DISCUSSION

Under 49 C.F.R. § 1152.25(e)(4), a request to reopen an administratively final action must state in detail the respects in which the challenged decision involves material error, or is affected by new evidence or substantially changed circumstances. Such a request will be granted only upon a showing that the challenged action would be materially affected by one or more of those criteria. 49 C.F.R. § 1152.25(e)(2)(ii). Here, the Board can entertain a motion to reopen because a NITU and public use condition have been issued and the abandonment has not yet been consummated. However, the current record is insufficient for the Board to determine whether the motion to reopen has satisfied one or more of the reopening criteria set out above.

Given the issues raised by the City and the ambiguity regarding the description of the Line, BNSF will be directed to file supplemental information. Specifically, BNSF must submit information and supporting documentation regarding the following: (1) a description and any maps that would clarify the beginning and endpoint of the Line; (2) a statement describing how the sidetrack referred to by the City relates to the Line, if at all; (3) a statement as to whether there is an industry track agreement that relates to the Line; and (4) a statement as to whether BNSF is, or has been, providing service pursuant to an industry track agreement. This additional information will assist the Board in making a determination on the issues raised and ensure an accurate record regarding the location of the Line. The Board will direct BNSF to file this supplemental information by December 23, 2015.

#### It is ordered:

1. BNSF is directed to file the supplemental information identified in this decision by December 23, 2015.
2. This decision and notice is effective on its date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.